

June 28, 2010

TO: State Lands Subcommittee of the Legislative Finance Committee  
FR: Candace West, DNRC Chief Legal Counsel  
RE: Land Board Use of Compensatory Damages Awarded in Montana, LLC v State of Montana

This summary explains the constitutional and statutory basis for the Land Board's intended expenditure of \$41 million specifically awarded for compensatory damages in the PPL Montana, LLC v. State case. A more detailed legal opinion of the Land Board's position was presented to the subcommittee at their June 25, 2010 meeting.

The Supreme Court directed compensatory damages be awarded to compensate the trust for past damages and that PP&L must pay future rents through a lease agreement. As a matter of law compensatory damages are directed to the principal of the trust.

The principal of the trust is the Public School Fund account and the state lands that compose the body of the trust. The Land Board has directed these compensatory damages be placed into the principal of the land trust by acquiring land to be held as part of the permanent land trust for the long-term support of education.

**I—LAND BOARD AUTHORITY TO ACT:** The Montana Constitution in Art. X, Sec. 4 expressly establishes the Land Board's authority to direct, control, lease, exchange, and sell lands which have been or may be granted for the support and benefit of the various state educational institutions. Sec. 11, also provides that all public land shall be classified by the board of land commissioners in a manner provided by law.

**II—TRUST PRINCIPAL:** The court ordered PP&L to pay compensatory damages for the unauthorized occupation of trust lands. General trust law establishes the presumption these receipts should become trust principal in keeping with the Board's and the state's fiduciary duty to be impartial, fair, and reasonable to all current and future beneficiaries. MCA 72-34-423

**III--EXEMPTION FROM LEGISLATIVE APPROPRIATION:** The expenditure by the Land Board of the court-ordered PP&L compensatory damages for the "restricted purpose of the acquisition of lands to be held in trust for the common schools beneficiaries" meets the conditions of the court's award. It falls squarely within the exemption from legislative appropriation because it is "money deposited in the treasury from non-state and non-federal sources restricted by law or by the terms of an agreement, such as a contract, trust agreement or donation." In this case these are funds restricted by the order of the court which is law.

It should be noted there are currently numerous similar "exempt from appropriation funds" existing within different state agencies. They are most often administered for the benefit of a public health or public resource trusts.